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DELEGATION OF THE COMMISSION
OF THE EUROPEAN COMMUNITIES

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

3rd June 1994

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20037

Dear Mr. Caton,

By this letter, I wish to inform you that Mr. J. Currie, Deputy Head of Delegation of the Commission of the European Communities, requested a meeting with Chairman Hundt to provide him with a copy of a note to the State Department detailing the European Commission's comments on the FCC Notice of Proposed Rulemaking in the matter of Amendment of the Commission's rules to establish rules and policies pertaining to a Mobile satellite service in the 1610 - 1626.5/ - 2483.5 - 2500 MHz frequency bands.

Mr. Currie met with Mr. Scott Harris, in the absence of Chairman Hundt, on June 3, 1994. He was accompanied by Mr. Paul Verhoef and Anna Snow. Mr. Currie requested that the note be part of the FCC proceedings and put on the public record.


Anna Snow
Special Trade Assistant

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Date: June 3, 1994

To: William Caton

From:  Jim Ball (OIC)

Subject: Ex Parte filing in CC Docket No. 92-166

Representatives from the European Community(EC), met with Scott Harris, Director of OIC, on June 3, 1994 to present views on the Commission's proceeding in CC Docket 92-166. Also present were Karen Brinkmann, Diane Cornell, Fern Jarmulnek and myself. The EC provided the attached letter to comply with the Commission's ex parte rules. I am submitting the letter with attachment to place within the Docket files.

cc: Scott Harris
Karen Brinkmann
Diane Cornell
Fern Jarmulnek



DELEGATION OF THE COMMISSION
OF THE EUROPEAN COMMUNITIES

The Delegation of the European Commission presents its compliments to the Department of State and has the honour to refer to the Notice of Proposed Rulemaking adopted by the Federal Communications Commission on 19 January 1994 and released on 18 February 1994, in the Matter of Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610 - 1626.5/2483.5 - 2500 MHz Frequency Bands.

The European Commission welcomes the opportunity to comment offered by the FCC Notice and wishes to express its concern about the proposals in the Notice which seem to reflect an approach based on purely domestic US interests despite acknowledgements of the importance of the global characteristics of satellite personal communications services. Indeed, the European Commission fears that the proposed approach could jeopardize the viable introduction of global satellite personal communications services.

In order to avoid such results, the European Commission recalls that it has made representations on this matter on previous occasions and that bilateral consultations with the United States have been initiated, notably during its exchange with the State Department and other US Government agencies in September 1992, on which occasion the underlying issues were already outlined. These issues continue to give rise to concerns in Europe. The European Commission understands that the US Government is cognisant of these issues and will continue to consult at the international level in order to seek mutually acceptable solutions.

The regulatory approach proposed by the FCC in the matter of satellite personal communications raises global regulatory and trade issues which should be the subject of consultations with foreign administrations if the US is to take full account of this global nature, and before the US proceeds with its domestic licensing process. As it is explicitly recognised in the Notice, satellite personal communications services rely on the world-wide market, rather than on national markets. Operators licensed in the US thus depend on obtaining access to other markets, among which that of the European Union. Uncoordinated licensing in the US and the rest of the world could lead to denial of access to world markets by virtue of, for example, frequency scarcity. It is thus in the interest of the US to seek a multilateral approach.

The European Commission wishes to set out its general concerns as follows:

- o In view of the global nature of the satellite personal communications services proposed, the European Commission considers that it would be inappropriate for the FCC to proceed to licence all or some of the proposed operators prior to an international agreement as to the principal conditions of operation of services. This is not intended as a comment on the proposed concepts of any of the US systems proponents. Actually, the European Union would like to facilitate the introduction of satellite PCS, taking into account the global dimension. However, the European Commission expects the US Government to seek international agreement on all relevant matters, especially as the Notice does not take into account current projects envisaged outside the US, nor does it consider possible future global systems of third country or US origin, their access to the US market, and their possible licensing conditions in the US, and in particular their use of frequency spectrum in the US.
- o Within the European Union, the conditions under which operators can provide satellite personal communications services would fall, in several important respects, under the provisions of community law regarding telecommunications, the internal market, competition, and trade in services and equipment. If unbalances in the sector were to result in potentially anti-competitive positions of such service providers on the European Union market, notably as a result of unilateral US licensing decisions, the European Commission would have to review the compatibility of such anti-competitive positions with community law, in particular its competition rules.
- o By seeking views on market access restrictions through ownership requirements embedded in Common Carrier regulation, the Notice seems to indicate that the FCC intends to extend these restrictions to the satellite personal communications sector. As applicants did in their comments to this Notice, the Commission wishes to draw the attention of the US authorities once again to the ownership restrictions which are included in section 310 of the Communications Act, and which restrict non-US owned investments in communications services such as mobile satellite services in the US market. These restrictions

constitute an effective inhibition to potential European investment, and should be removed from the statute. The Commission considers that extension of ownership restrictions to any aspect of satellite personal communications services, at the very beginning of multilateral negotiations on basic telecommunications services in the context of the GATS, is a worrying signal. Moreover, the European Commission invites the US Government to consider the compatibility of such extension with the terms of the Ministerial Decision on Negotiations on Basic Telecommunications. The European Commission takes this opportunity to note with concern that similar restrictions are contained in the US prototype Bilateral Investment Treaty and its annex.

- o While recognising the right of US enterprises to take advantage of their technological and managerial expertise in world markets, including the European Union, the European Commission notes with concern that the FCC explicitly advances trade and industrial policy arguments underlining the importance of satellite personal communications services for the US economy and for US leadership internationally, while failing to address either the unilateral character of its licensing procedures or the potentially discriminatory character of US law in this area. The European Commission seeks clarification by the Department of State as to the extent to which these arguments are compatible with overall US policies and positions, and with US international obligations.

In reaction to specific points in the Notice, the European Commission would like to raise the following issues:

- o In view of their extra-territorial implications, the European Commission considers that technical requirements and conditions can only be imposed at national level after agreement has been concluded at world level in appropriate fora, in particular in the ITU. In this respect the Notice, in addition to domestic US requirements, suggests orbit, frequency and coverage considerations with direct implications at global level. Examples are the band sharing plan itself, the conditions on coverage worldwide, and the use of non-geostationary orbits only. Although fully committed to the protection of scarce spectrum, resources, and supporting the basic thrust of the argument, the European Union has considerable difficulty understanding how unilateral US positions can protect the global resources required for these systems as it would not

allow for a balanced approach required in this area. The European Commission therefore seeks clarification on how the US proposes to protect the availability and use of these global resources, especially in view of the notion of equitable and standard conditions of access for all countries and in view of the absence of any discussion in the Notice of requirements necessary to effect the satisfactory application of both Resolutions 46 and 70 of the WARC-92, but also in the absence of any discussion of de-orbiting procedures in the Notice.

- o In relation to type-approval and international roaming, the Notice mentions that international discussions might be required to allow the use of equipment around the globe. Given the extensive experience built up in Europe on these issues, the European Commission is prepared to cooperate at international level, particularly in the area of equipment standards on the basis of which international type-approval could be agreed. Exploratory studies are already being conducted by the European Telecommunications Standards Institute.

In relation to the issue of interoperability and interconnectivity, detailed agreements on billing, roaming, networking and similar matters could be required to ensure the availability of the services under a variety of circumstances. Again, extensive experiences in Europe from the regional terrestrial mobile services environment can be brought to bear in efforts to assist the international community in advancing in this area.

- o The European Commission seeks comments as to how the US authorities view the issue of legal interception of communications signals in the context of these systems.
- o With regard to Distress and Safety Communications, the European Commission seeks comments as to what position the US Government is developing in relation to rescue and response services, and what impact this position has on the ensuing worldwide regime.
- o Likewise, the absence of any reference to the INMARSAT plans for satellite personal communications services, particularly in view of existing US and European interests in the organisation, is raising concerns and the European Commission seeks clarification as to the US position on the future of the organisation in relation to this issue.

- o In relation to future Global Navigation Satellite Systems and the use of current US and Russian satellite positioning systems (GPS and GLONASS respectively), the European Commission seeks clarification as to the US position on acceptable spectrum sharing arrangements between these satellite positioning systems and the satellite personal communications systems given the important interests of both user communities.
- o Finally, the Notice does not address the important issue of access to the 2 GHz frequency band, the relation between access to the 2 GHz band and access to the bands under discussion in the Notice, potential unfair competitive situations resulting from the availability scenarios of the bands, and the relation to the planned future generation mobile and mobile satellite services.

* * *

Not only the international consortia established by the applicants for US domestic licences, but also other international consortia planning to provide satellite personal communications services already have, or may have, European partners and are expected to apply for licences in the European Union, where a growing public and industrial interest is developing in these services, as reflected in the Council Resolution of 7 December 1993 on the introduction of satellite personal communications in the Community, as well as the relevant references in the recently published Green Paper on Mobile and Personal Communications.

The European Commission is concerned however that European industrial interests might be jeopardized if the proposed US unilateral approach is met with a negative reaction from other nations, leading to actions which might effectively block the development of these services in the absence of international consensus on the issues raised above. The European Commission thus submits that it is in the interest of both the US and the European Union to approach this matter on a multilateral basis. Given that the applicants in their comments to this Notice consider that their concepts subscribe to the US vision on global information infrastructures, the European Commission notes with interest the statements of the US Vice-President in his recent address to the ITU World Development Conference, where he underlined that such infrastructures must be set up on the basis of a cooperative and democratic effort, and can not be dictated by a single country.

The European Commission considers that successful development of satellite personal communications services can only be achieved if full account is taken of the international dimension as this extends to, inter alia, the availability of orbit and frequency resources and the sharing thereof, access to the global telecommunications markets, the availability of international financing, the participation of the world's telecommunications and space industries at equipment and services level, the availability of internationally recognised equipment standards and type-approval regulations, as well as a minimum level of understanding on interconnection and interoperability issues and on procurement practices.

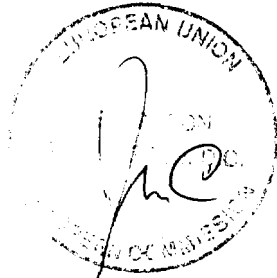
As stated in the Notice indeed, implementation of these services remain solely within a country's national jurisdiction and control, but the European Commission feels that it is important to avoid misunderstandings among nations on the ambitions, goals, and modalities of the introduction scenarios which may lead either to ineffectiveness or to incompatible regulatory demands in national licensing conditions, thereby creating considerable international tensions, not only in relation to the development of satellite personal communications services, but also in relation to future developments in the increasingly globalised information and telecommunications sectors.

* * *

As part of the already established consultation process with the US Government in the matter of satellite personal communications, the European Commission would like to request further consultations with the relevant US authorities in order to review the issues raised. With a view to contribute to a coordination at a wider international level on the introduction of satellite personal communications services, the European Commission will bring this Note Verbale to the attention of the international community.

The Delegation of the European Commission would be grateful for the views of the Department of State, and requests that this Note Verbale be transmitted to the Federal Communications Commission so that it be part of the proceedings in this matter, and put in the public record.

The Delegation of the European Commission avails itself of the opportunity to renew to the Department of State the assurance of its highest consideration.



Washington, D.C.

1 June 1994